ORDER OVERRULING OBJECTIONS, ADOPTING REPORT AND RECOMMENDATION and DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS

Came for consideration the Petition for a Writ of Habeas Corpus filed by petitioner challenging one of his two 1991 state court convictions for attempted capital murder. On November 2, 2006, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending petitioner's habeas application be dismissed as time barred. Petitioner filed objections to the Report and Recommendation on November 13, 2006. By his objections, petitioner argues his habeas application is not time barred because:

- 1. Petitioner's grounds of error did not exist until this Court set aside his murder conviction in Cause No. 2:94-CV-207;¹
- 2. Certain facts were not made available to petitioner until the September 4, 1996 evidentiary hearing held in Cause No. 2:94-CV-207; and
- 3. The limitation period did not begin to run until petitioner was able to obtain, from his trial counsel, a sworn affidavit attesting to the facts which provided proof for the grounds of error raised in the instant habeas application.

¹Petitioner incorrectly cites the case number as 2:04-CV-207.

Case 2:03-cv-00430-J Document 9 Filed 11/21/06 Page 2 of 2 PageID 56 Petitioner has also submitted a separate "Response as to Why the Petition Should Not be Barred Under Title 28 U.S.C. § 2244(d)" wherein he argues the 1-year statute of limitations is unconstitutional and, thus, void. Petitioner also argues he "should be entitled to equitable habeas corpus review of his constitutional claims in this case despite the 'statute of limitations' provisions of §2244(d)." In his application, petitioner has asserted grounds of an involuntary plea, ineffective assistance of counsel, denial of a fair trial, and judicial abuse of discretion.

The undersigned United States District Judge has made an independent examination of the record in this case. The undersigned finds no basis for tolling the limitation period in this case. The objections filed by petitioner are without merit and are hereby OVERRULED. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus filed by petitioner is hereby DISMISSED.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE